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DRAFT REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS FORTY-NINTH SESSION

Rapporteur: Mr. Zdzislaw Galicki

CHAPTER VII

INTERNATIONAL LIABILITY FOR INJURIOUS CONSEQUENCES ARISING OUT OF ACTS NOT PROHIBITED BY INTERNATIONAL LAW

1. Pursuant to paragraph 6 of General Assembly resolution 51/160, the International Law Commission at its 2482nd meeting on 26 May established a Working Group [1] to consider the question of how the Commission should proceed with its work on this topic and to make recommendations to the Plenary to that effect.

2. The Working Group held two meetings from 2 to 13 June. It had before it the report of the 1996 Working Group of the Commission on international liability for injurious consequences arising out of acts not prohibited by

[1] Mr. C. Yamada (Chairman), Mr. E. Addo, Mr. E. Candioti, Mr. C. Economides, Mr. L. Ferrari Bravo, Mr. G. Hafner, Mr. Q. He, Mr. J. Kateka, Mr. I. Lukashuk, Mr. T. Melescanu, Mr. G. Pambou-Tchivounda, Mr. P. Rao, Mr. B. Simma, and Mr. Z. Galicki (ex officio).

international law; [2] the Topical summary of the discussion held in the Sixth Committee at its fifty-first session; [3] and written comments submitted by Governments. [4]

3. At its 2496th meeting on 19 June, the Commission considered and endorsed the report of the Working Group which is reflected in paragraphs 4-6 below.

4. The Working Group reviewed the work of the Commission on the topic since 1978. It noted that the scope and the content of the topic remained unclear due to such factors as conceptual and theoretical difficulties, appropriateness of the title and the relation of the subject to "State responsibility". The Working Group further noted that the Commission had dealt with two issues under the topic: "prevention" and "international liability". In the view of the Working Group, these two issues are distinct from one another, though relates. The Working Group therefore agreed that henceforth the issues of prevention and of liability should be dealt with separately.

5. The Working Group noted that the work of the Commission on "prevention" was already at an advanced stage and that many of the articles in that area had been provisionally adopted by the Commission. In the view of the Working Group, the Commission is now well placed to proceed with the work and possibly the completion of the first reading of the draft articles on "prevention" in the next few years. The Working Group also believes that any decision on the form and nature of the draft articles on "prevention" should be decided at a later stage.

6. In the Working Group, it was widely viewed with some differing shades that "international liability" is the core issue of the topic as originally conceived and that the Commission should retain this subject. At the same time, it was agreed that the Commission needs to await further comments from the Governments before it can make any decision on the issue. It was also noted that the title of the topic might need adjustment depending on the scope and contents of the draft articles.

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[2] See Official Records of the General Assembly, Fifty-first Session, Supplement No. 10, (A/51/10), Annex I.

[3] A/CN.4/479, sect. C.

[4] A/CN.4/481 and Add.1.

7. On the basis of the recommendation of the Working Group the Commission decided:

(a) to proceed with its work on "international liability for injurious consequences arising out of acts not prohibited by international law", undertaking first prevention under the subtitle "Prevention of transboundary damage from hazardous activities", and to appoint a Special Rapporteur as soon as possible;

(b) further to reiterate its request for comments of Governments if they have not previously done so on the issue of international liability in order to assist the Commission to finalize its view.